

Message Text

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TO SECSTATE WASHDC 6731

C O N F I D E N T I A L SECTION 1 OF 9 GENEVA 2966

LIMDIS

S/IL FOR DALE GOOD

IO FOR TOUISSANT AND PALMER

PASS LABOR FOR SAMUELS, HOROWITZ, QUACKENBUSH, AVERY AND
LINSENMAYER

PASS COMMERCE FOR UPTON

EO 11652: GDS
TAGS: ILO,IPLAB
SUBJ: ILO: REPORT OF COMMITTEE OF EXPERTS ON APPLICATION OF
CONVENTIONS

REF: GENEVA 2630

1. FOLLOWING ARE PERTINENT PARAS FROM REPORT OF
COMMITTEE OF EXPERTS ON APPLICATION OF CONVENTIONS
(COE), EXCERPTS OF WHICH HAVE BEEN GIVEN TO US ON
CONFIDENTIAL BASIS BY ILO SECRETARIAT. FULL REPORT
OF COE WILL BE PUBLISHED MAY 6. UNTIL THEN, THESE
EXCERPTS SHOULD BE TREATED ON CONFIDENTIAL BASIS.
COPIES OF EXCERPTS FROM COE REPORT HAVE BEEN POUCHED
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TO IO (PALMER), DOL (HOROWITZ) AND COMMERCE (UPTON).

2. FUNDAMENTAL PRINCIPLES MANDATE AND METHODS OF WORK
OF THE COMMITTEE: BEGIN TEXT: THE COMMITTEE DISCUSSED THE APPROACH
TO BE ADOPTED IN EVALUATING NATIONAL LAW AND PRACTICE AGAINST THE
REQUIREMENTS OF INTERNATIONAL LABOR CONVENTIONS.
IT REAFFIRMS THAT ITS FUNCTION IS TO

DETERMINE WHETHER THE REQUIREMENTS OF A GIVEN CONVENTION ARE BEING MET, WHATEVER THE ECONOMIC AND SOCIAL CONDITIONS EXISTING IN A GIVEN COUNTRY. SUBJECT ONLY TO ANY DEROGATIONS WHICH ARE EXPRESSLY PERMITTED BY THE CONVENTION ITSELF, THESE REQUIREMENTS REMAIN CONSTANT AND UNIFORM FOR ALL COUNTRIES. IN CARRYING OUT THIS WORK THE COMMITTEE IS GUIDED BY THE STANDARDS LAID DOWN IN THE CONVENTION ALONE, MINDFUL, HOWEVER, OF THE FACT THAT THE MODES OF THEIR IMPLEMENTATION MAY BE DIFFERENT IN DIFFERENT STATES. THESE ARE INTERNATIONAL STANDARDS, AND THE MANNER IN WHICH THEIR IMPLEMENTATION IS EVALUATED MUST BE UNIFORM AND MUST NOT BE AFFECTED BY CONCEPTS DERIVED FROM ANY PARTICULAR SOCIAL OR ECONOMIC SYSTEM. END TEXT

3. CONVENTION NO 29, FORCED LABOR: BEGIN TEXT:

MR. TUNKIN, MEMBER OF THE COMMITTEE, STATED HIS OPPOSITION TO THE OBSERVATIONS WITH REGARD TO SOME SOCIALIST COUNTRIES. HE SAID THAT THESE OBSERVATIONS WERE THE RESULT OF THE ERRONEOUS APPROACH TO THE IMPLEMENTATION OF SOME ILO CONVENTIONS OUTLINED IN HIS STATEMENT ON CONVENTION NO 87. ANOTHER MEMBER OF THE COMMITTEE, MR. GUBINSKI, ASSOCIATED HIMSELF WITH THE STATEMENT BY MR. TUNKIN.

THE COMMITTEE REFERS IN THIS CONNECTION TO ITS COMMENTS WITH RESPECT TO CONVENTION NO 87.

4. CONVENTION 29: USSR: BEGIN TEXT:

1. LEGISLATION CONCERNING PERSONS "LEADING A PARASITIC WAY OF LIFE". IN ITS PREVIOUS OBSERVATION, THE COMMITTEE NOTED WITH INCONFIDENTIAL

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INTEREST THAT EARLIER LEGISLATION ON "PERSONS LEADING A PARASITIC WAY OF LIFE" HAD BEEN REPEALED ON 7 AUGUST 1975 BY AN UKASE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE RSFSR, BUT OBSERVED THAT ANOTHER UKASE ADOPTED THE SAME DAY HAD EXTENDED THE SCOPE OF SECTION 209 OF THE PENAL CODE OF THE RSFSR. THIS SECTION, WHICH PREVIOUSLY APPLIED TO PERSONS SYSTEMATICALLY ENGAGING IN VAGRANCY AND BEGGING, WAS EXTENDED TO COVER ALSO "PERSONS LEADING, OVER A PROLONGED PERIOD OF TIME, ANY OTHER PARASITIC WAY OF LIFE". THE COMMITTEE ASKED THE GOVERNMENT TO SUPPLY INFORMATION ON THE PRECISE MEANING AND SCOPE OF THIS PROVISION.

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C O N F I D E N T I A L SECTION 2 OF 9 GENEVA 2966

LIMDIS

S/IL FOR DALE GOOD

IO FOR TOUISSANT AND PALMER

PASS LABOR FOR SAMUELS, HOROWITZ, QUACKENBUSH, AVERY AND
LINSENMAYER

PASS COMMERCE FOR UPTON

IN ITS REPLY, THE GOVERNMENT INDICATES THAT THE CONCEPT OF A
"PARASITIC WAY OF LIFE" IS TO BE EXPLAINED AS LIVING OFF UN-
EARNED INCOME, THE DERIVING OF WHICH IS PROHIBITED BY LAW AND RUNS
COUNTER TO THE MORAL STANDARDS OF A SOCIALIST SOCIETY. IT STATES
THAT THE PRINCIPLE THAT "WORK IS A MORAL OBLIGATION AND A
DUTY FOR EVERY ABLE BODIED CITIZEN" IS LAID DOWN IN THE FUNDAMENTAL
PRINCIPLES OF LABOUR LEGISLATION OF THE USSR AND THE UNION RE-
PUBLICS; THIS PRINCIPLE IS EMBODIED IN A WHOLE SERIES OF OTHER
STANDARD-SETTING TEXTS AND WILL BE IMPLEMENTED IRRESPECTIVE OF
CHANGES IN THE LEGISLATION IN FORCE. IN SO
FAR AS SPECIAL PENAL PROVISIONS, SUCH AS SECTIONS 154 AND 147
OF THE PENAL CODE OF THE RSFSR, APPLY TO PERSONS LEADING A PARA-
SITIC WAY OF LIFE BY DERIVING AN UNEARNED INCOME FROM SPECULATION
OR FRAUD, UNDER SECTION 209 OF THE PENAL CODE OF THE RSFSR,
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THE SAME CONDUCT IS DEEMED TO BE VAGRANCY AND LIVING AT THE EXPENSE
OF OTHERS, AS IS DERIVING AN ILLICIT UNEARNED INCOME FROM FORTUNE-
TELLING AND GAMBLING.

THE COMMITTEE TAKES DUE NOTE OF THESE EXPLANATIONS. IT ALSO
NOTES THE PROVISIONS OF ORDINANCE NO 10 OF 28 JUNE 1973 OF THE
PLENUM OF THE SUPREME COURT OF THE USSR (AS AMENDED BY ORDINANCE

NO 13 OF 3 SEPTE 1976) WHICH LAY DOWN GUIDELINES FOR COURTS DEALING WITH CASES OF VIOLATION OF THE PASSPORT RULES, SYSTEMATIC VAGRANCY OR BEGGING AND THE LEADING OF ANY OTHER PARASITIC WAY OF LIFE OVER A PROTRACTED PERIOD OF TIME. IT NOTEST HAT, WHILE THIS ORDINANCE CONTAINS DEFINITIONS OF "SYSTEMATIC VAGRANCY" AND "BEGGING", IT DOES NOT SPECIFICALLY DEFINE THE CONCEPT OF "LEADING ANY OTHER PARASITIC WAY OF LIFE". HOWEVER, ACCORDING TO SECTION 6, CRIMINAL PROCEEDINGS FOR LEADING A PARASITIC WAY OF LIFE FOR A PROTRACTED PERIOD MAY NOT BE BROUGHT AGAINST MINORS, PERSONS RECOGNIZED UNDER ESTABLISHED LEGAL PROCEDURE AS INVALIDS OR WHO HAVE REACHED THE AGE OF RETIREMENT, OR PREGNANT WOMEN OR WOMEN WITH CHILDREN UNDER THE AGE OF 8 YEARS OR HOUSEWIVES. SECTION 7 PROVIDES THAT IN THE ABSENCE AMONG THE CASE MATERIALS OF SUFFICIENT DATA CONCERNING THE CAPACITY FOR WORK OF A PERSON CHARGED WITH LEADING A PARASITIC WAY OF LIFE FOR A PROTRACTED PERIOD, HIS CAPACITY FOR WORK CAN BE ASCERTAINED ON THE BASIS OF MEDICAL FINDINGS.

THE COMMITTEE RECALLS THE COMMENTS MADE IN PARAGRAPHS 55 AND 56 OF THE GENERAL SURVEY OF FORCED LABOUR IN ITS 1968 REPORT, WHERE IT POINTED OUT THAT LAWS CREATING AN OBLIGATION FOR ALL ABLE-BODIED CITIZENS TO ENGAGE IN A GAINFUL OCCUPATION, SUBJECT TO PENAL SANCTIONS, ARE INCOMPATIBLE WITH THE CONVENTION AND THAT LAWS ON VAGRANCY AND ASSIMILATED OFFENCES WORDED IN SUCH GENERAL TERMS AS TO LEND THEMSELVES TO APPLICATION AS MEANS OF DIRECT OR INDIRECT COMPULSION TO WORK SHOULD BE AMENDED TO BRING THEM WITHIN THE NARROWER CONCEPT OF VAGRANCY. THE COMMITTEE WOULD REQUEST THE GOVERNMENT TO PROVIDE INFORMATION ON ANY MEASURES TAKEN OR CONTEMPLATED REGARDING SECTION 209 OF THE PENAL CODE

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OF THE RSFSR AND CORRESPONDING PROVISIONS IN OTHER UNION REPUBLICS WITH A VIEW TO ENSURING OBSERVANCE OF THE CONVENTION.

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C O N F I D E N T I A L SECTION 3 OF 9 GENEVA 2966

LIMDIS

S/IL FOR DALE GOOD

IO FOR TOUISSANT AND PALMER

PASS LABOR FOR SAMUELS, HOROWITZ, QUACKENBUSH, AVERY AND
LINSENMEYER

PASS COMMERCE FOR UPTON

2. OBLIGATIONS IN THE PLANNING OF AGRICULTURAL PRODUCTION IN
PREVIOUS COMMENTS, THE COMMITTEE NOTED THAT, ACCORDING TO THE PRE-
AMBLE AND SECTION 3 OF THE ORDER OF THE CENTRAL COMMITTEE OF THE
COMMUNIST PARTY OF THE SOVIET UNION AND THE COUNCIL OF MINISTERS
OF THE USSR OF 20 MARCH 1964, DEALING WITH THE PLANNING OF AGRICULT-
URAL PRODUCTION, COLLECTIVE FARMS, IN PLANNING THEIR PRODUCTION, WERE
UNDER AN OBLIGATION TO ENSURE THE ATTAINMENT OF ASSIGNMENTS SET IN
ACCORDANCE WITH THE STATE PLAN. THE COMMITTEE ALSO NOTED THAT
UNDER SECTION 267 OF THE CIVIL CODE OF
THE RSFSR, PROCUREMENT CONTRACTS WERE TO BE CONCLUDED ON THE BASIS
OF THE PLANS OF STATE PURCHASE OF SUCH PRODUCTS AND THE PLANS FOR
THE DEVELOPMENT OF AGRICULTURAL PRODUCTION ON COLLECTIVE AND STATE
FARMS, SO THAT, WHEN CONCLUDING THESE CONTRACTS, COLLECTIVE
FARMS APPEARED TO REMAIN BOUND BY THE OBLIGATIONS WHICH THE ORDER
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OF 1964 PLACED UPON THEM. ACCORDINGLY, WHILE NOTING THAT ONLY
CIVIL SANCTIONS APPLIED IN CASES OF FAILURE TO
CARRY OUT PROCUREMENT CONTRACTS, THE COMMITTEE POINTED OUT THAT
THE OBLIGATIONS LAID UPON COLLECTIVE FARMS BY THE ORDER OF 20
MARCH 1964 IN RELATION TO THE PLANNING OF AGRICULTURAL PRODUCTION
BOTH PRECEDED AND UNDERLAY THE CONCLUSION OF PROCUREMENT CONTRACTS
AND DID NOT DERIVE FROM THE LATTER. THE COMMITTEE ASKED THE GOVERN-
MENT TO PROVIDE INFORMATION ON THE SANCTIONS BY WHICH THE OB-
SERVANCE OF THE OBLIGATIONS IN RELATION TO PLANNING WOULD BE
ENFORCED.

IN ITS REPORT, THE GOVERNMENT - WHILE ONCE MORE REFERRING TO
THE CIVIL SANCTIONS APPLICABLE TO COLLECTIVE FARMS IN THE EVENT OF
NON-FULFILMENT OF CONTRACTUAL OBLIGATIONS - STATES THAT THE AGRICULTURAL PRODUCTIONS PLANS THEMSELVES DO NOT ENVISAGE ANY SANCTIONS.

THE COMMITTEE REQUESTS THE GOVERNMENT TO INDICATE WHETHER ANY OTHER LEGISLATIVE TEXTS MAKE PROVISION FOR SANCTIONS WHICH MAY BE APPLICABLE IN CASES OF FAILURE TO COMPLY WITH THE OBLIGATIONS DEFINED IN THE ORDER OF 20 MARCH 1964 CONCERNING THE PLANNING AGIRCULTURAL PRODUCTION. IN PARTICULAR, THE COMMITTEE WOULD BE GRATEFUL IF THE GOVERNMENT WOULD INDICATE IN ITS NEXT REPORT WHETHER SECTION 172 OF THE PENAL CODE OF THE RSFSR - WHICH PUNISHES THE NON-PERFORMANCE OR IMPROPER PERFORMANCE OF DUTIES BY AN OFFICIAL WHICH CAUSES SUBSTANTIAL HARM TO STATE OR SOCIAL INTERESTS - HAS BEEN THE SUBJECT OF COURT DECISIONS DEFINING OR ILLUSTRATING THE PRECISE SCOPE OF THIS PROVISION, THUS CLARIFYING WHETHER IT MIGHT BE APPLICABLE IN CASES OF NON-COMPLIANCE WITH THE OBLIGATIONS DEFINED IN THE ABOVE-MENTIONED ORDER OF 20 MARCH 1964.

TERMINATION OF MEMBERSHIP OF COLLECTIVE FARMS. IN PREVIOUS COMMENTS, THE COMMITTEE NOTED THAT, ACCORDING TO ARTICLE 3 OF THE FUNDAMENTAL PRINCIPLES OF LABOUR LEGISLATION OF THE USSR AND THE UNION REPUBLICS ADOPTED ON 15 JULY 1970, THE LABOUR OF COLLECTIVE FARM MEMBERS WAS REGULATED BY THE COLLECTIVE FARM RULES ADOPTED ON THE BASIS OF AND IN CONFORMITY WITH THE MODEL COLLECTIVE FARM RULES AND THE LEGISLATION OF THE USSR AND THE UNION REPUBLICS RELATING TO COLLECTIVE FARMS; AND THAT, UNDER CLAUSE 7 OF THE MODEL COLLECTIVE FARM RULES ADOPTED ON 28 NOVEMBER 1969, A MEMBER'S APPLICATION TO LEAVE A COLLECTIVE FARM MUST BE SUBMITTED TO THE MANAGEMENT COMMITTEE AND THE GENERAL MEETING OF THE COLLECTIVE FARM. IT ACCORDINGLY APPEARED THAT A MEMBER OF A COLLECTIVE FARM MIGHT TERMINATE HIS MEMBERSHIP ONLY WITH THE CONSENT OF THE MANAGEMENT COMMITTEE AND THE GENERAL MEETING OF THE COLLECTIVE FARM, AND THAT, IF SUCH CONSENT WERE REFUSED, HE WOULD REMAIN BOUND BY ALL THE OBLIGATIONS RESULTING FROM HIS MEMBERSHIP OF THE COLLECTIVE FARM (INCLUDING OBLIGATIONS REGARDING WORK).

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C O N F I D E N T I A L SECTION 4 OF 9 GENEVA 2966

LIMDIS

S/IL FOR DALE GOOD

IO FOR TOUISSANT AND PALMER

PASS LABOR FOR SAMUELS, HOROWITZ, QUACKENBUSH, AVERY AND
LINSENMEYER

PASS COMMERCE FOR UPTON

THE COMMITTEE ALSO NOTED THAT, UNDER BASIC REGULATIONS ON THE
ISSUE AND MAINTENANCE OF COLLECTIVE FARMERS' WORKBOOKS APPROVED
BY THE UNION COUNCIL OF COLLECTIVE FARMS AND CONFIRMED BY ORDER
NO 310 OF 21 APRIL 1975 OF THE COUNCIL OF MINISTERS OF THE USSR,
COLLECTIVE FARMERS WERE TO BE ISSUED WORKBOOKS, WHICH WERE TO BE
KEPT AT THE MANAGEMENT OFFICE OF THE COLLECTIVE FARM AND HANDED
TO THE OWNER IF AND WHEN HE CEASED TO BE A MEMBER OF THE COLLECTIVE.
SINCE, ACCORDING TO THE ORDER OF THE COUNCIL OF MINISTERS OF THE
USSR AND THE ALL-UNION CENTRAL COUNCIL OF TRADE UNIONS OF 6 SEPT
1973 RESPECTING WORKBOOKS FOR WAGE AND SALARY EARNERS, THE PRODUCTION
OF THE WORKBOOK WAS REQUIRED FOR TAKING UP EMPLOYMENT, IT AP-
PEARED IMPORTANT THAT THE LEGISLATION SHOULD CLEARLY SPECIFY THE
MANNER IN WHICH A MEMBER OF A COLLECTIVE FARM COULD TERMINATE SUCH
MEMBERSHIP.

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THE COMMITTEE ACCORDINGLY SUGGESTED THAT CLAUSE 7 OF THE MODEL
COLLECTIVE FARM RULES SHOULD BE AMENDED TO PROVIDE EXPRESSLY THAT
MEMBERS OF A COLLECTIVE FARM MIGHT TERMINATE THEIR MEMBERSHIP BY
A UNILATERAL DECISION, SUBJECT ONLY TO GIVING NOTICE OF REASON-
ABLE LENGTH.

THE COMMITTEE HAS TAKEN NOTE OF THE INDICATIONS PROVIDED BY THE
GOVERNMENT TO THE CONFERENCE COMMITTEE IN 1976 AND IN ITS LAT-
EST REPORT. THE GOVERNMENT HAS STATED THAT, ACCORDING TO CLAUSE 1
OF THE MODEL COLLECTIVE FARM RULES, COLLECTIVE FARMS ARE VOLUNTARY
ORGANIZATIONS, AND THAT IT WOULD BE IMPOSSIBLE TO QUALIFY THEM AS
VOLUNTARY IF ANY OF THEIR MEMBERS COULD NOT VOLUNTARILY LEAVE THEM.
IT HAS FURTHERMORE INDICATED THAT THE PURPOSE OF THE REQUIREMENT
OF NOTIFICATION UNDER CLAUSE 7 IS NOT TO PREVENT A MEMBER OF A
COLLECTIVE FARM FROM LEAVING, BUT TO BRING THE FACT OF HIS DEPARTURE

TO THE ATTENTION OF ALL MEMBERS SO THAT THE COLLECTIVE FARM MAY FIND A REPLACEMENT OR MAY TRY TO PERSUADE THE MEMBER NOT TO LEAVE DURING A PERIOD OF INTENSE WORK; AN AUTHORITATIVE COMMENTARY ON THE MODEL RULES STATES THAT CLAUSE 7 ESTABLISHES THE POSSIBILITY FOR A COLLECTIVE FARMER TO LEAVE THE COLLECTIVE FARM ON ANY GROUNDS. THE GOVERNMENT CONCLUDES THAT THE MANAGEMENT COMMITTEE AND THE GENERAL MEETING ARE UNDER AN OBLIGATION TO SATISFY THE REQUEST OF A MEMBER TO LEAVE THE FARM AND STATES THAT A REFUSAL OF THE REQUEST WOULD BE ILLEGAL AND WOULD BE COUNTERMANDED BY THE DISTRICT SOVIET OF WORKING PEOPLE'S DEPUTIES. THUS, IN ITS VIEW, BOTH LAW AND PRACTICE CONFORM TO THE CONVENTION.

THE GOVERNMENT HAS ALSO INDICATED THAT, IN ORDER TO AMEND CLAUSE 7 OF THE MODEL COLLECTIVE FARM RULES, IT WOULD BE NECESSARY TO CONVENE THE UNION COUNCIL OF COLLECTIVE FARMS WHICH HAS MET ONLY THREE TIMES BEFORE, AND IT IS NOT POSSIBLE TO CALL SUCH A LARGE-SCALE MEETING FOR THE PURPOSE OF MAKING MINOR AMENDMENTS TO THE MODEL RULES; MOREOVER, THE GOVERNMENT COULD NOT INTERFERE IN THE INTERNAL AFFAIRS OF THE COLLECTIVE FARMS.

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LIMDIS

S/IL FOR DALE GOOD

IO FOR TOUISSANT AND PALMER

PASS LABOR FOR SAMUELS, HOROWITZ, QUACKENBUSH, AVERY AND
LINSENMAYER

PASS COMMERCE FOR UPTON

THE COMMITTEE TAKES DUE NOTE OF THESE VARIOUS EXPLANATIONS. AS REGARDS THE LAST-MENTIONED POINT, IT RECALLS THAT ACCORDING TO ARTICLE 3 OF THE FUNDAMENTAL PRINCIPLES OF LABOUR LEGISLATION OF THE USSR AND THE UNION REPUBLICS, THE LABOUR OF COLLECTIVE FARM MEMBERS IS GOVERNED BY THE LEGISLATION OF THE USSR AND THE UNION REPUBLICS ON COLLECTIVE FARMS, IN ADDITION TO THE COLLECTIVE FARM RULES. IT WOULD THUS APPEAR THAT LEGISLATIVE MEASURES TO CLARIFY THE RIGHTS OF COLLECTIVE FARM MEMBERS COULD BE ADOPTED BY THE LEGISLATIVE AUTHORITIES WITHOUT NECESSARILY CONVENING THE UNION COUNCIL OF COLLECTIVE FARMS. ACCORDINGLY, HAVING REGARD TO THE IMPORTANT

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QUESTION AT ISSUE, THE COMMITTEE WOULD BE GRATEFUL IF THE GOVERNMENT WOULD ONCE MORE REEXAMINE THE MATTER WITH A VIEW TO THE ADOPTION OF APPROPRIATE MEASURES TO PROVIDE EXPRESSLY IN THE LEGISLATION THAT MEMBERS OF A COLLECTIVE FARM MAY TERMINATE THEIR MEMBERSHIP BY A UNILATERAL DECISION, SUBJECT ONLY TO GIVING NOTICE OF REASONABLE LENGTH. END TEXT.

5. CONVENTION 87: FREEDOM OF ASSOCIATION. BEGIN TEXT:

THE COMMITTEE HAS MADE NO ASSUMPTIONS ABOUT CAPITALIST, SOCIALIST OR THIRD WORLD COUNTRIES. IT APPLIES TO ALL, IMPARTIALLY, THE SAME TEST OF CONFORMITY TO THE OBLIGATIONS UNDERTAKEN BY EACH COUNTRY UNDER RATIFIED CONVENTIONS. FURTHERMORE, THE COMMITTEE HAS NO INDICATIONS WHICH MIGHT LEAD IT TO CONSIDER THAT ITS OBSERVATIONS CONCERNING SOCIALIST COUNTRIES DID NOT REFLECT THE ACTUAL SITUATION. END TEXT

6. CONVENTION 87 - USSR: BEGIN TEXT:

WITH REFERENCE TO ITS PREVIOUS OBSERVATION, THE COMMITTEE NOTES THE STATEMENTS MADE BY THE GOVERNMENT REPRESENTATIVE TO THE CONFERENCE COMMITTEE IN 1976 AND THE INFORMATION SUPPLIED BY THE GOVERNMENT IN ITS LATEST REPORT.

TRADE UNION RIGHTS OF COLLECTIVE FARM MEMBERS

WITH REGARD TO THE QUESTION CONCERNING THE RIGHT OF MEMBERS OF COLLECTIVE FARMS TO FORM TRADE UNIONS, THE COMMITTEE OBSERVED PREVIOUSLY THAT SECTION 225 OF THE LABOUR CODE OF THE RSFSR, RESPECTING THE OPERATION OF TRADE UNIONS, DOES NOT APPLY TO MEMBERS OF COLLECTIVE FARMS WHO ARE EXCLUDED FROM THIS CODE. CONSEQUENTLY, THE COMMITTEE REQUESTED THE GOVERNMENT TO INDICATE WHETHER THE MEMBERS OF COLLECTIVE FARMS CAN NOT ONLY ESTABLISH ORGANIZATIONS ARE ABLE TO OPERATE EFFECTIVELY FOR FURTHERING AND DEFENDING THE INTERESTS OF THEIR MEMBERS WITHOUT THE NECESSITY OF SPECIAL LEGISLATION BEING ADOPTED TO THIS EFFECT.

THE COMMITTEE NOTES THAT IN HIS STATEMENT TO THE CONFERENCE

COMMITTEE IN 1976, THE GOVERNMENT REPRESENTATIVE STATED THAT MEMBERS
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OF COLLECTIVE FARMS WERE BEGINNING TO ESTABLISH THEIR OWN UNIONS.
IN ITS MOST RECENT REPORT THE GOVERNMENT POINTS OUT THAT MEMBERS
OF THESE FARMS MAY ESTABLISH THEIR OWN UNIONS PURSUANT TO THE CON-
STITUTION AND CIVIL CODE AND THEY MAY JOIN AN ALREADY EXISTING
UNION WHICH, BY ITS NATURE, IS MOST APPROPRIATE FOR THEM, NAMELY
THE TRADE UNION OF MANUAL AND NON-MANUAL AGRICULTURAL AND STATE
PURCHASING WORKERS, TO WHICH MANY COLLECTIVE FARM MACHINE OPERATORS,
SPECIALISTS, STUDENTS IN HIGHER AND SECONDARY SPECIALIZED AGRICULTUR
AL
EDUCATIONAL ESTABLISHMENTS AND RURAL VOCATIONAL TECHNICAL SCHOOLS
ALREADY BELONG. IN SUPPORT OF THIS INFORMATION, THE GOVERNMENT CITES
THE DECREE ADOPTED IN SPET 1976 BY THE ALL-UNION CENTRAL TRADE
UNION COUNCIL, WHEREBY THE TRADE UNION COMMITTEES OF THE VARIOUS
LEVELS OF THE AGRICULTURAL WORKERS UNION (NEW TITLE OF THE UNION
MENTIONED ABOVE) AND THE FOOD INDUSTRY WORKERS UNION WERE EN-
TRUSTED WITH RESPONSIBILITY FOR IMPLEMENTING MEASURES TO ENROLL
ALL MEMBERS OF COLLECTIVE FARMS WHO WISH TO JOIN IT IN
THE TRADE UNION.

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C O N F I D E N T I A L SECTION 6 OF 9 GENEVA 2966

LIMDIS

S/IL FOR DALE GOOD

IO FOR TOUISSANT AND PALMER

PASS LABOR FOR SAMUELS, HOROWITZ, QUACKENBUSH, AVERY AND
LINSENMAYER

PASS COMMERCE FOR UPTON

THE COMMITTEE NOTES THIS INFORMATION WITH PARTICULAR INTEREST AND REQUESTS THE GOVERNMENT TO COMMUNICATE THE TEXT OF THE DECREE IN QUESTION AND INFORMATION ON DEVELOPMENTS IN PRACTICE IN THIS AREA. THE COMMITTEE REQUESTS THE GOVERNMENT ALSO TO PROVIDE PARTICULARS OF ANY PROVISION ADOPTED OR ENVISAGED WITH RESPECT TO THE OPERATION OF THOSE TRADE UNIONS WHICH MEMBERS OF COLLECTIVE FARMS MIGHT HAVE ESTABLISHED THEMSELVES OR MIGHT WISH TO ESTABLISH AND, MORE GENERALLY, WITH RESPECT TO THE ACTIVITIES WHICH MIGHT BE UNDERTAKEN BY A TRADE UNION REPRESENTING THESE WORKERS AS WELL AS ON THE PRACTICAL SITUATION IN THIS RESPECT.

THE RIGHT OF WORKERS TO ESTABLISH UNIONS OF THEIR CHOICE
THE COMMITTEE NOTED THAT THE PROVISIONS OF THE LABOUR CODE OF THE RSFSR, SUCH AS SECTION 7 CONCERNING COLLECTIVE BARGAINING
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AND SECTION 80 CONCERNING THE RIGHTS OF TRADE UNIONS COMMITTEES, AS WELL AS THE REGULATIONS OF THE RIGHTS OF FACTORY WORKS OF LOCAL TRADE UNION COMMITTEES OF 1971, DID NOT CONTEMPLATE THE POSSIBLE EXISTENCE OF ANOTHER TRADE UNION ORGANIZATION ESTABLISHED BY WORKERS OF THE CATEGORY REPRESENTED BY THE TRADE UNION COMMITTEE REFERRED TO IN THE LEGISLATION AND THAT, BY BESTOWING TRADE UNION FUNCTIONS SOLELY UPON THE TRADE UNION COMMITTEE OF THE UNDERTAKING CONCERNED, THESE PROVISIONS SEEMED TO PRECLUDE THE POSSIBILITY OF ANOTHER ORGANIZATION REPRESENTING WORKERS OF THE SAME CATEGORY BEING SET UP. THE COMMITTEE CONSIDERED THAT SUCH A SITUATION WOULD BE INCOMPATIBLE WITH ARTICLE 2 OF THE CONVENTION, WHICH PROVIDES FOR THE RIGHT OF WORKERS TO ESTABLISH ORGANIZATIONS OF THEIR OWN CHOOSING.

THE GOVERNMENT REPRESENTATIVE, HAVING INFORMED THE CONFERENCE COMMITTEE IN 1973 THAT NEITHER THE SECTIONS OF THE LABOUR CODE REFERRED TO NOR ANY OTHER PROVISION EXCLUDED THE POSSIBILITY OF ESTABLISHING ORGANIZATIONS OTHER THAN THOSE WHICH ALREADY EXISTED, THE COMMITTEE OBSERVED THAT SUCH ORGANIZATIONS WOULD NOT BE ABLE TO CARRY OUT THEIR FUNCTIONS SINCE THE LEGISLATION BESTOWED THESE FUNCTIONS ON THE TRADE UNION COMMITTEE EXCLUSIVELY.

THE COMMITTEE CONSIDERED THAT THE GOVERNMENT SHOULD FIRST AMEND THE LEGISLATION IN FORCE SO THAT SHOULD ANY WORKERS WISH TO EXERCISE THE RIGHT, IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 2 OF THE CONVENTION, TO ESTABLISH OTHER ORGANIZATIONS TO FURTHER AND DEFEND THEIR INTERESTS, APART FROM THE TRADE UNION COMMITTEE, THEY MIGHT DO SO LAWFULLY AND IN ACCORDANCE WITH ESTABLISHED RULES.

IN ITS MOST RECENT REPORT THE GOVERNMENT STATES THAT THE PRACTICE ESTABLISHED IN THE USSR AND A NUMBER OF OTHER COUNTRIES OF SETTING UP TRADE UNIONS ON THE BASIS OF THE PRODUCTION PRINCIPLE, WHEREBY ALL THE WORKERS IN ONE UNDERTAKING BELONG TO ONE TRADE UNION, IS MORE FAVOURABLE FOR THE WORKERS. IN ACCORDANCE WITH PARA 8 OF ARTICLE 3 OF THE ILO CONSTITUTION, THE GOVERNMENT SEES NO NECESSITY FOR CHANGING THE LEGISLATION IN FORCE.

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IN THIS CONNECTION THE COMMITTEE WISHES TO RECALL THAT IT HAS POINTED OUT ON A NUMBER OF OCCASIONS THAT EVEN WHERE IT MAY BE TO THE ADVANTAGE OF THE WORKERS TO AVOID A MULTIPPLICITY OF TRADE UNION ORGANIZATIONS, THE TERMS OF THE CONVENTION REQUIRE THAT TRADE UNION DIVERSITY SHOULD BE POSSIBLE IN ALL CASES. THE COMMITTEE MUST POINT OUT THAT THE ARGUMENT THAT A NATIONAL SITUATION WHICH IS CONSIDERED BY THE GOVERNMENT TO BE MORE FAVOURABLE TO THE WORKERS COULD "JUSTIFY NONCOMPLIANCE WITH AN EXPRESS TERM OF A CONVENTION" IS NOT ACCEPTABLE; ARTICLE 19, PARA 8, OF THE CONSTITUTION IS APPLICABLE TO NATIONAL PROVISIONS "WHICH GO BEYOND THE REQUIREMENTS OF A CONVENTION WITHOUT CONTRADICTING THEM" (SEE, IN THIS RESPECT, THE CONCLUSIONS OF THE EXAMINATION OF A REPRESENTATION PRESENTED UNDER ARTICLE 24 OF THE ILO CONSTITUTION IN, OFFICIAL BULLETIN, VOL LV, 1972, NOS. 2, 3 AND 4 PAGE 147, PARAGRAPHS 82 AND 83).

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TO SECSTATE WASHDC 6743

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LIMDIS

S/IL FOR DALE GOOD

IO FOR TOUISSANT AND PALMER

PASS LABOR FOR SAMUELS, HOROWITZ, QUACKENBUSH, AVERY AND
LINSENMAYER

PASS COMMERCE FOR UPTON

IN THESE CIRCUMSTANCES THE COMMITTEE CAN ONLY REFER TO ITS
EARLIER CONCLUSIONS.

ROLE OF THE COMMUNIST PARTY IN TRADE UNIONS
WITH REGARD TO THE PROVISIONS CONTAINED IN SECTION 126 OF THE
CONSTITUTION OF THE USSR, WHICH PROVIDES THAT THE COMMUNIST PARTY
IS THE LEADING CORE OF ALL WORKERS' ORGANIZATIONS, THE COMMITTEE
POINTED OUT THAT IF THAT PROVISION SHOULD RESULT IN THE OPERATION
OF THESE ORGANIZATIONS BEING SUBJECT TO THE GENERAL DIRECTION
OF THE COMMUNIST PARTY, AS WAS INDICATED BY THE GOVERNMENT, IT
WOULD NOT ONLY BE IMPOSSIBLE TO LEGALLY ESTABLISH ORGANIZATIONS
INDEPENDENT OF THIS PARTY, BUT IT WOULD NOT BE POSSIBLE EITHER
FOR THESE ORGANIZATIONS TO EXERCISE FULLY THE RIGHT TO ORGANIZE
THEIR ACTIVITIES AND FORMULATE THEIR PROGRAMMES IN CONFORMITY WITH
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THE PROVISIONS OF THE CONVENTION.

THE GOVERNMENT REPRESENTATIVE STATED TO THE CONFERENCE COMMITTEE
IN 1976 THAT THE COMMUNIST PARTY DOES NOT INTERVENE IN QUESTIONS
ARISING BETWEEN TRADE UNIONS AND STATE BODIES. IT ACTS ONLY IF AN
ORGANIZATION UNDERTAKES POLICIES CONTRARY TO THE GENERAL DIRECTIONS
OF SOVIET SOCIETY. THE LEADING ROLE OF THE PARTY IS EXERCISED BY
PERSONS WHO ARE MEMBERS BOTH OF THE COMMUNIST PARTY AND OF
THE ORGANIZATIONS CONCERNED. IF AN ORGANIZATION WERE NOT TO PROPERLY
DEFEND WORKERS' INTERESTS, THE COMMUNIST PARTY COULD ADVISE IT AND
GUIDE IT, SO THAT IT COULD RETURN TO ITS PROPER FUNCTIONS.

THE COMMITTEE NOTES THE EXPLANATIONS OF THE GOVERNMENT
REPRESENTATIVE BUT CONSIDERS THAT THESE DO NOT MODIFY ITS
PREVIOUS CONCLUSIONS. THE COMMITTEE CONSIDERS IN PARTICULAR THAT
THE SITUATION IS ONE OF RESTRICTION OF TRADE UNION RIGHTS IMPOSED BY
LAW (IN THIS CASE BY NATIONAL CONSTITUTION).

OTHER QUESTIONS

AS REGARDS OTHER MATTERS ON WHICH THE COMMITTEE HAD PREVIOUSLY
MADE COMMENTS (INCLUDING, PARTICULARLY, THE RIGHT OF MEETING WITHOUT
PRIOR AUTHORIZATION AND MATTERS ARISING OUT OF SECTION 126 OF
THE CONSTITUTION OF THE USSR), THE COMMITTEE REMAINS PREPARED TO
CONSIDER THE SITUATION FURTHER IN THE LIGHT OF ANY NEW FACTORS WHICH

MAY BE BROUGHT TO ITS ATTENTION. END TEXT

7. CONVENTION 111: DISCRIMINATION: CZECHOSLOVAKIA. BEGIN TEXT:
FURTHER TO ITS PREVIOUS OBSERVATION, THE COMMITTEE NOTES THE

STATEMENTS OF A REPRESENTATIVE OF THE GOVERNMENT AND THE EXCHANGE
OF VIEWS ON THIS SUBJECT AT THE CONFERENCE COMMITTEE IN 1976 WITH
RESPECT TO THE CONCERN EXPRESSED BY THIS COMMITTEE WITH RESPECT
TO THE SITUATION OF WORKERS WHO MIGHT HAVE BEEN DISMISSED IN BREACH
OF THE CONVENTION AND WITH REGARD TO THEIR RIGHT TO OBTAIN RE-
DRESS. THE REPORT PROVIDED BY THE GOVERNMENT LATER ON STATED THAT
THE PROVISIONS CONCERNING DISMISSALS IN SECTIONS 46(1)(E) AND
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53(I) (C) OF THE LABOUR CODE IN THEIR PRE-1975 VERSION WERE VERY
RARELY APPLIED IN RESPECT OF "BREACH OF THE SOCIALIST SOCIAL ORDER",
WHICH INVOLVED ACTIVITIES ENDANGERING STATE SECURITY, AND THAT THE
APPLICATION OF THESE PROVISIONS UNDER THE SUPERVISION OF THE
COURTS WAS IN CONFORMITY WITH ARTICLE 4 OF THE CONVENTION.

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C O N F I D E N T I A L SECTION 8 OF 9 GENEVA 2966

LIMDIS

S/IL FOR DALE GOOD

IO FOR TOUISSANT AND PALMER

PASS LABOR FOR SAMUELS, HOROWITZ, QUACKENBUSH, AVERY AND

LINSENMAYER

PASS COMMERCE FOR UPTON

THE COMMITTEE REGRETS THAT THE GOVERNMENT CONSIDERED ITSELF UNABLE TO PROVIDE IN ITS REPORT, AS REQUESTED, A DETAILED LIST OF THE CASES IN WHICH WORKERS MAY BE CONSIDERED AS HAVING ENDANGERED STATE SECURITY WITHIN THE SCOPE OF THE ABOVE-MENTIONED PROVISIONS AND WITHIN THE MEANING OF THE REFERENCE MADE TO THIS CONCEPT IN THE LABOUR CODE SINCE ITS AMENDMENT IN 1975, ALTHOUGH IT DOES STATE, THAT THIS CONCEPT APPLIES TO THE BASIC PRINCIPLES OF ADMINISTRATION OF THE STATES SET OUT IN THE CONSTITUTION AND PROTECTED BY PROVISIONS IN THE PENAL CODE (EVEN IF CRIMINAL PROCEEDINGS WERE NOT UNDERTAKEN FOR ANY REASON).

THE COMMITTEE IS BOUND TO INSIST THAT THE GOVERNMENT PROVIDE FULLER PARTICULARS ON THIS POINT. IT NOTES, FOR EXAMPLE, THAT THE PENAL CODE DEFINES AS A CRIME AGAINST THE REPUBLIC THE INCITEMENT
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OF NO LESS THAN TWO PERSONS AGAINST THE SOCIALIST STATE AND SOCIAL SYSTEM AND TO ENABLE OR ABET THE UTTERANCE OF ANY STATEMENT HAVING THIS EFFECT BY MEANS OF THE PRESS, FILM, BROADCASTING, TELEVISION OR SIMILAR MEANS IS AN AGGRAVATING FACTOR (SECTION 100). SINCE PROVISIONS OF SUCH A GENERAL CHARACTER MIGHT BE EXTENDED TO THE EXPRESSION OF ANY DIVERGENT POLITICAL OPINION AND RESULT, ON THESE GROUNDS, IN MEASURES BEING TAKEN AGAINST ANY WORKER IN RESPECT OF HIS EMPLOYMENT OR OCCUPATION, THE COMMITTEE HOPES THAT THE GOVERNMENT WILL INDICATE WHAT STEPS HAVE BEEN TAKEN OR ARE CONTEMPLATED TO ENSURE THAT THE LEGISLATION IS IN ACCORDANCE WITH THE CONVENTION IN THIS REGARD.

WITH RESPECT TO THE PROBLEMS TO WHICH THE PARTIAL IMPLEMENTATION OF THE CONVENTION MAY GIVE RISE, THE COMMITTEE NOTES THAT A REPRESENTATION UNDER ARTICLE 24 OF THE ILO CONSTITUTION, CONCERNING MEASURES WHICH ARE ALLEGEDLY TAKEN AGAINST VARIOUS PERSONS BRINGING CERTAIN QUESTIONS TO THE ATTENTION OF PUBLIC OPINION, HAS BEEN BROUGHT BEFORE THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE AT ITS 202ND (MARCH 1977) SESSION. CONSEQUENTLY, THE COMMITTEE HAS DECIDED TO DEFER ITS OWN EXAMINATION OF THESE PROBLEMS IN PRACTICAL APPLICATION UNTIL A DECISION IS TAKEN ON THIS COMPLAINT.

THE GOVERNMENT ASKED TO SUPPLY FULL PARTICULARS TO THE CONFERENCE AT ITS 63RD SESSION AND TO REPORT IN DETAIL FOR THE PERIOD ENDING 30 JUNE 1977, AS REGARDS THE QUESTIONS DEALT WITH IN THE SECOND AND THIRD PARAGRAPHS OF THIS OBSERVATION. END TEXT.

8. CONVENTION 111: ISRAEL BEGIN TEXT:

THE COMMITTEE THANKS THE GOVERNMENT FOR THE INFORMATION SUPPLIED
IN ITS REPORT IN REPLY TO ITS PREVIOUS COMMENTS. IT NOTES IN
PARTICULAR THAT A NUMBER OF ADMINISTRATIVE AND ADVISORY BODIES OF
A REPRESENTATIVE NATURE HAVE BEEN CREATED TO ENCOURAGE THE IMPE-
MENTATION OF PROGRAMMES AIMED AT EQUAL OPPORTUNITY AND TREATMENT
FOR CITIZENS WITHOUT DISTINCTION OF RELIGION ON THE ONE HAND AND
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WITHOUT DISTINCTION OF SEX ON THE OTHER. IT HOPES THAT THE GOVERN-
MENT WILL CONTINUE TO SUPPLY DETAILED INFORMATION ON THE MEASURES
TAKEN ON THIS BASIS AND ON THE RESULTS ACHIEVED.

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C O N F I D E N T I A L SECTION 9 OF 9 GENEVA 2966

LIMDIS

S/IL FOR DALE GOOD

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PASS LABOR FOR SAMUELS, HOROWITZ, QUACKENBUSH, AVERY AND
LINSENMAYER

PASS COMMERCE FOR UPTON

IN ADDITION, IN THE LIGHT OF THE INFORMATION SUBMITTED TO THE
GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE ON THE SITUATION
OF THE WORKERS IN THE OCCUPIED TERRITORIES AND OF THE DATA SUPPLIED
BY THE GOVERNMENT ON THIS MATTER (AS REFLECTED IN A DOCUMENT ON

THE QUESTION SUBMITTED TO THE MARCH 1976 SESSION OF THE GOVERNING BODY), THE COMMITTEE HOPES THAT THE GOVERNMENT WILL BE ABLE TO SUPPLY ANY APPROPRAITE ADDITIONAL INFORMATION ON THE OPPORTUNITIES AFFORDED TO THESE WORKERS TO ENJOY EQUALITY OF OPPORTUNITY AND TREATMENT, PARTICULARLY AS REGARDS THE FOLLOWING MATTERS (IN LIGH T

OF THE ABOVE-MENTIONED DOCUMENT): (A) THE ORGANIZATION OF RECRUITMENT AND FREE CHOICE OF EMPLOYMENT; (B)IVOCATIONAL GUIDANCE AND TRAINING, ACCESS TO DIFFERENT TYPES OF EMPLOYMENT AND OCCUPATION, PROMOTION, SECURITY OF EMPLOYMENT; (C) GENERAL POLICY FOR THE CONFIDENTIAL

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USE AND DEVELOPMENT OF THE HUMAN RESOURCES OF THE OCCUPIED TERRITORIES; (D) THE APPLICATION IN PRACTICE OF THE PRINCIPLE OF EQUALITY OF TREATMENT IN REGARD TO COMUNERATION, SOCIAL BENEFITS BONUSES AND OTHER WORK-RELATED ALLOWANCES; (E) THE EVOLUTION OF THE POSITION-RELATING TO THE RESIDENCE RIGHTS, HOUSING, TRANSPORT COSTS AND CONDITIONS OF THESE WORKERS; (F) THE SUPERVISORY AND OTHER MEASURES TAKEN TO ENSURE THAT THESE WORKERS ARE NOT THE SUBJECT OF DISCRIMINATORY PRACTICES IN INDIVIDUAL UNDERTAKINGS IN REGARD TO WORKING CONIDITIONS; (G) GENERAL TRENDS IN WAGES, IN OTHER CONDITIONS OF WORK AND IN SOCIAL BENEFITS IN THEIR TERRITORIES; (H) THE EXERCISE OF TRADE UNION AND COLLECTIVE BARGAINING RIGHTS. END TEXT.
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Message Attributes

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Decaption Note: 25 YEAR REVIEW
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Secure: OPEN
Status: NATIVE
Subject: ILO: REPORT OF COMMITTEE OF EXPERTS ON APPLICATION OF CONVENTIONS
TAGS: ELAB, ILO
To: STATE
Type: TE
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